DOCUMENT RESUME

ED 175 161 EA 012 085

TITLE Title IX Manual.
INSTITUTION Office for Civil Rights (DHEW), Washington, D.C.
PUB DATE Sep 75
NOTE 73p.; Not available in paper copy due to marginal legibility of original document

EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS Educational Policy; Elementary Secondary Education; *Evaluation Methods; *Federal Legislation; *Federal Regulation; Government Publications; *Law Enforcement; Policy Formation; Preschool Education; *School Law; Sex Discrimination; Sex Fairness
IDENTIFIERS *Title IX Education Amendments 1972

ABSTRACT

This manual was addressed to all Regional Directors, Education Branch Chiefs, Regional Attorneys, and Elementary and Secondary Education Division Staff of the Office of Civil Rights. Those concerned are directed to follow the manual in the conduct of Title IX or joint Title IX-Title VI/ESAA reviews, as well as in complaint investigations. Although the manual deals with all relevant sections of the final Title IX Regulation, it is expected that supplements and bulletins will be issued as additional experience is acquired in investigating Title IX issues and further policy decisions evolve. Seventeen short chapters deal with specific aspects of the law. In each chapter the relevant section of the law is cited, basic principals are outlined, and the information to be obtained from school administrators is listed. The concluding chapter outlines review procedures and provides instructions about letters of findings, including a sample letter. (Author/MLF)

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DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

OFFICE OF THE SECRETARY

OFFICE FOR CIVIL RIGHTS

ELEMENTARY & SECONDARY EDUCATION DIVISION

TITLE IX MANUAL

SEPTEMBER, 1975

EA 012 085

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MEMORANDUM

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY

TO : All Regional Directors, Education Branch Chiefs, Regional Attorneys and Elementary and Secondary Education Division Staff

DATE: SEP 17 1975

FROM : Lloyd R. Henderson, Director
Elementary and Secondary Education Division

SUBJECT: Manual on Enforcing Title IX of the Education Amendments of 1972 in Pre-School, Elementary, Secondary and Vocational Schools

This manual has been approved by the OCR Director and should be followed in your conduct of Title IX or joint Title IX-Title VI/ESAA reviews, as well as in complaint investigations. It incorporates and thus supplants pertinent sections of my memorandum re: Interim Policies and Procedures for Enforcing Title IX, dated March 17, 1975. Although this manual deals with all relevant sections of the final Title IX Regulation, it is not a static document. We expect that supplements and bulletins will be issued as we acquire additional experience in investigating Title IX issues and further policy decisions evolve. To this extent, we hope you will report any areas which you feel need further delineation or clarification.

Attachment

I. General Information

The Final Regulation implementing Title IX of the Education Amendments of 1972 became effective on July 21, 1975, 45 days after publication in the Federal Register on June 4. Although Title IX generally parallels Title VI of the Civil Rights Act of 1964, there are sections of the implementing regulation which are unique, namely: requirements for self-evaluation and for establishment of a grievance procedure, as well as a provision permitting separation on the basis of sex in those portions of sex education instruction dealing exclusively with human sexuality. In addition the statute exempts from coverage the admissions practices of nonvocational pre-school, elementary and secondary schools, the membership practices of the YMCA, YWCA, Girl Scouts, Boy Scouts, Camp Fire Girls, and certain other voluntary youth service organizations whose membership has traditionally been limited to members of one sex under the age of 19. Unlike Title VI, Title IX: applies only to educational programs and activities receiving Federal financial assistance; applies to treatment of all employees involved in educational programs and activities rather than only to those professional and paraprofessional employees directly responsible for the education of students; does not apply to military schools; and applies to educational institutions controlled by a religious organization to the extent compliance would be consistent with religious tenets. Furthermore, Title IX permits separation on the basis of sex in residential facilities and in other facilities in which maintenance of personal privacy is an issue. Congress also directed that the Title IX Regulation include "reasonable provisions considering the nature of particular sports."

These differences and statutory exemptions indicate that in eliminating sex discrimination in educational programs and activities, some traditional practices, such as separate nonvocational schools, may be continued; provisions may be made for maintaining personal privacy; practices dictated by religious tenets will be upheld; and actual sex differences, particularly in connection with physical performance, may be considered.

II. Self-Evaluation (Section 86.3(c)(d))

As the Department reviewed the nearly 10,000 comments submitted on the proposed Title IX Regulation, it became clear that sex discrimination in educational programs is often unconscious. Thus, perhaps the most important provision in the regulation is that each recipient by July 21, 1976, must have evaluated its practices and policies regarding admission and access of students to its educational programs and activities, treatment of students, and employment of both professional and nonprofessional staff working in its educational programs or activities.

A. Basic Principles

1. A recipient educational institution is required to:

   a. evaluate, in terms of the requirements of the final regulation, its policies and practices concerning admission of students; access of students to schools, programs, and activities; treatment of students and employment of staff working in its educational programs or activities;

   b. modify any policies or practices which do not or may not meet the requirements of the regulation;

   c. take appropriate remedial steps to eliminate the effects of any discrimination which resulted or may result from adherence to the policies subject to modification under b. above; and

   d. maintain on file for at least three years following completion of the evaluation, a description of any modifications made pursuant to b. and of any remedial steps taken pursuant to c.

2. The Department has not mandated any specific means for conducting the evaluation, as a method that might be appropriate in one situation may be less than effective in another. If you are asked by school

officials to furnish guidance for the self-evaluation process, make clear that OCR is not prescribing any particular method, but you may nevertheless suggest that a district may wish to appoint an evaluation committee broadly representative of the community, including school board members, administrators, teachers, counselors, parents, and students. The evaluators should then identify those policies and practices affected by each section of the regulation and determine the extent to which both the policies and practices and their results meet the requirements of Title IX, identifying those which do not, and recommending appropriate modification of practices and policies as well as appropriate remedial steps. In addition you may wish to send as guidance a copy of Rosa D. Wiener's paper entitled "Title IX: One More Step Toward Equal Educational Opportunity" which was sent to each region in Title IX Bulletin #3, dated August 21, 1975. You may also wish to review with school officials the basic principles and data to be analyzed in the ensuing sections of this manual.

B. Information to be obtained. (Items starred should be obtained prior to any on-site review.)

*1. Ask for a description of any modifications made in practices or policies and of any remedial steps taken as a result of the self-evaluation required by Section 86.3.

2. Keep in mind that recipients have up until one year to complete the self-evaluation. Thus, if you are told that the evaluation has not been completed, ask what steps have been taken to initiate the self-evaluation.

III. Designation of Responsible Employee and Adoption of a Grievance Procedure (Section 86.7)

A. Basic Principles

1. The recipient is required to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX, including investigation of complaints alleging noncompliance with or actions which would be prohibited by Title IX.

2. The recipient is required to notify all students and employees of the name(s), office address(es) and telephone number(s) of the employee(s) designated under II.A.1.

3. The recipient is required to adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging actions that are prohibited by the regulation. The Department has not and will not issue guidelines or standards for grievance procedures. The recipient must decide for itself the procedures appropriate for prompt and equitable resolution of complaints. OCR's concern is only whether procedures have been established, not with the form or substance of the procedures.

B. Information to be obtained. (Items starred should be obtained prior to any on-site review.)

*1. Copies of notice(s) sent to students and employees stating the name(s), business address(es) and telephone number(s) of the employee(s) designated to coordinate the recipient's compliance efforts.

*2. Copy of the publication of the recipient's grievance procedures.

IV. Dissemination of Policy (Section 86.9

A. Basic Principles

1. Pre-school, elementary and secondary nonvocational schools and other organizations conducting educational programs or activities benefiting from Federal financial assistance must notify the following that they do not discriminate on the basis of sex in the educational programs or activities they operate and that they are required by Title IX not to discriminate on the basis of sex.

    a. applicants for employment;

    b. student and parents of students;

    c. employees;

    d. sources of referral of applicants for employment;

    e. all unions or professional organizations holding collective bargaining or professional agreements with recipients.

2. In addition to the above, recipients operating vocational schools must notify:

    a. applicants for admission;

    b. sources of referral of applicants for admission.

3. At a minimum, the notification must contain the following:

    a. a statement that the requirement not to discriminate in education programs or activities extends to the recipient's employment practices and policies;

b. in the case of a recipient operating a vocational school, a statement, in addition, that the requirement not to discriminate extends to its admission practices and policies;

c. a statement that inquiries about the application of its nondiscriminatory policy may be referred to the employee(s) designated to coordinate its compliance efforts or to the Director, Office for Civil Rights.

4. The initial notification must be made within 90 days of the effective date of the regulation (by October 19, 1975) or within 90 days of an initial application for Federal financial assistance, whichever date is later.

5. Recipients must include the initial notification in the following:

a. local newspapers;

b. newspapers and magazines operated by the recipient or by student, alumni, and alumnae groups;

c. memoranda or other written communications distributed annually to every student and employee.

6. In any announcement, bulletin, catalog, or application form made available by the recipient to the persons or organizations listed under IV. A. 1. and 2., a statement of its nondiscriminatory policy must be published. Included in the above would be student and faculty or employee handbooks or manuals.

7. A recipient is prohibited from using or distributing publications of the type described under IV. 6. which suggest by text or illustration that applicants (in the case of vocational schools), students or employees are treated differently on the basis of sex.

8. Recipients are required to distribute without discrimination on the basis of sex the publications outlined under IV. A. 6., and are required to inform each of their employmert admission (in the case of vocational schools), and recruitment representatives, including counselors or student advisors, and personnel officers, of their nondiscriminatory policy and require such representatives to adhere to such policy.

B. Information to be obtained. (Items starred should be obtained prior to any on-site review.)

*1. Copies of notification sent to the persons and groups listed under IV. A. 1. and 2.

*2. Copies of any public information -- bulletins, announcements, catalogs, course descriptions, handbooks for students, employees or parents -- as described in IV. A. 6.

*3. Copies of the information given to employment and admission representatives, including counselors or student advisors and personnel officers, about the nondiscriminatory policy.

4. On-site, interview counselors or student advisors and personnel officer's to determine if they know and understand what Title IX is, what the recipient's policy is, and what steps, if any, have been taken to implement the recipient's policy. It is, of course, possible that the recipient's policies and practices were already nondiscriminatory on the basis of sex and that no new steps are necessary to assure compliance.

V. Membership Practices of Certain Organizations (Section 86.14) and Assistance to Organizations, Agencies or Persons Which Discriminate on the Basis of Sex (Section 86.31(b)(7)). See also Section 86.37(a)(2).)

A. Basic Principles

1. Recipients at the elementary and secondary school level may sponsor, furnish facilities to, or otherwise support the activities of certain organizations in which participation may be limited to members of one sex. Several organizations have been specified, namely: YMCA, YWCA, Girl Scouts, Boy Scouts, and Camp Fire Girls.

2. Certain other voluntary youth service organizations with sex-restrictive membership policies may also be sponsored if:

   a. they are exempt from taxation under Section 501(a) of the Internal Revenue Code of 1954; AND

   b. their membership has been traditionally limited to members of one sex; AND

   c. their membership is limited principally to persons of less than nineteen years of age.

   All three of the above conditions must be met. While it is clear that recipients may sponsor or aid the Brownies and Cub Scouts, it is not clear that they may sponsor or aid a single-sex Key Club. Elementary and secondary schools may not sponsor or support chapters of single-sex sororities or fraternities, whether social or honorary; single-sex motor societies, vocational, professional, or business clubs.

3. Recipients which are pre-school, elementary or secondary schools may not provide significant assistance to organizations, agencies, or persons not covered under V. A. 1. and 2. which discriminate on the basis of sex in providing any aid,

benefits or service to students or employees. Significant assistance must be determined by OCR on a case by case basis. The following are some examples of significant and insignificant assistance.

a. The following is an example of significant assistance:

---A school district distributes information about a health insurance plan and makes payroll deductions for employees enrolling in it. The plan requires those wishing coverage of pregnancy and related conditions to pay higher premiums than others who receive coverage for treatment of all other temporary disabilities. In this case the school district would be serving as an agent for an agency which discriminates in the provision of benefits to employees.

b. The following is an example of insignificant assistance:

---A school district regularly permits use, at no cost, of unused classrooms during school days and auditoriums during the evening and on weekends to community organizations. Among the organizations using the auditorium is the Junior Chamber of Commerce which is open only to males. Although the district's female employees are excluded from the aid, benefits and services membership in the Jay Cees might bestow, the assistance provided by the school district is significant.

B. Information to be obtained. (It is not necessary to seek information on this issue prior to an on-site review. Where problems are identified on-site, the following data should be collected.)

1. Names of any chapters of outside organizations whose membership is limited to students of one sex which use school facilities and in which students participate.

2. For each organization listed:

    a. Does the school provide a faculty advisor?

    b. What is the purpose of the organization?

    c. Is the organization exempt from taxation under Section 501(a) of the Internal Revenue Code of 1954?

    d. Is there any age limit for membership? If there is no age limit, what is the age range of the membership in the organization nationally?

    e. What role do school officials play in selecting members or certifying eligibility for membership?

3. Names of any organizations whose membership is limited to persons of one sex which use school facilities.

4. For each organization listed:

    a. What facilities are used and when?

    b. Does the organization pay a fee for the use of the facilities?

    c. Are the activities for which the organization uses school facilities open to persons of both sexes?

    d. Does the recipient provide staff for the organization's activities?

    e. For what kinds of activities are the facilities used by the organization?

5. Names of any organizations which give awards, prizes or scholarships to the recipient's students or employees which are restricted to persons of one sex.

6. For the awards, prizes, etc. listed above, do school officials:

    a. announce or post notices announcing opportunities to apply?

    b. nominate persons to be considered?

    c. otherwise help select persons to receive such awards, etc.?

7. On-site, determine by reviewing end of year school newspapers, awards day programs, graduation programs, the prizes, awards and scholarships given and whether they appear to be sex-restrictive.

8. Refer also to Section XV of this manual, entitled "Honors and Awards."

VI. Vocational Schools -- Admission and Recruitment. (Subpart C, Sections 86.21 - 86.23. Note that in addition to these sections, all other sections of the Regulation and of this manual apply to vocational schools. See also Subpart B, Sections 86.16 and 86.17 and Subpart D, Section 86.35(a).)

A. Basic Principles

1. Recipient vocational schools may not deny admission or discriminate in admission on the basis of sex.

2. In determining whether a person satisfies any policy or criterion for admission, or in offering admission, vocational schools may not:

   a. give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;

   b. apply numerical limitations (quotas) on the number or proportion of persons of either sex who may be admitted;

   c. have different admissions criteria on the basis of sex.

3. Vocational schools may not use tests or other admissions criteria which have a disproportionately adverse effect on persons on the basis of sex unless the use of such tests or criteria are shown to predict validly success in the programs or activities in question and alternative tests or criteria which do not have such a disproportionately adverse effect are shown to be unavailable.

4. In determining whether a person is eligible for admission or in offering admission, a vocational school may not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant which treats persons differently on the basis of sex.

5. In addition, it may not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom nor follow any rule which so discriminates or excludes.

6. Vocational schools may not make pre-admission inquiries as to the marital status of an applicant for admission. As a result, applicant forms cannot ask for marital status, "Miss" or "Mrs." designations.

7. Preference may not be given to applicants who previously attended another school which enrolled students of one sex or predominantly one sex if the giving of such preference has a discriminatory effect on admission on the basis of sex.

8. Recruitment primarily or exclusively at educational institutions which enroll students of one sex or predominantly one sex is prohibited if such action would have the effect of discriminating on the basis of sex.

9. Where vocational schools have previously limited their enrollment exclusively or predominantly to students of one sex, they are required to take specific steps designed to encourage individuals of the previously excluded sex to apply for admission. Such steps must include instituting recruitment programs which emphasize a commitment to enrolling students of the previously excluded sex.

B. Information to be obtained. (Items starred should be obtained prior to any on-site review.)

*1. The number of students admitted by sex for the following academic years:

a. 1964-65

b. if students of both sexes were not admitted in 1964-65, the number of students admitted by sex the first year after that date in which students of both sexes were enrolled.

c. the current and each of the preceding two academic years.

*2. A statement of the admissions criteria applied for each of the years listed above;

*3. The names, including form and date of publication, of any tests employed during the past two years to determine eligibility for admission. For each year, what was the average and median score obtained by male and female applicants?

*4. The names and enrollment by sex of all educational institutions at which recruitment efforts are directed;

*5. The names and enrollment by sex of all institutions which regularly refer applicants for admission;

*6. Copies of application forms used for the past two years;

*7. Copies of recruitment brochures and other information distributed to prospective applicants and enrollees;

*8. Copies of course catalogs, bulletins or other course descriptions circulated for the past two years;

*9. In the case of a vocational school which previously admitted students of only one sex, a description of the specific steps it is taking to recruit and enroll students of the previously excluded sex.

10. Interview admissions and recruitment personnel to find out what further steps they are planning to recruit and enroll students of both sexes and what problems they have found or foresee in doing so.

11. Interview counselors in institutions which commonly refer students for admission to determine whether they have received and are aware of the vocational school's nondiscriminatory policy.

12. Examine a sampling of applicant files for the past two years to determine the extent to which admissions criteria have been consistently applied to male and female applicants.

VII. Course Offerings (excluding physical education). (Subpart D, Section 86.34(a)(e)(f).)

A. Basic Principles

1. Title IX prohibits on the basis of sex:

a. exclusion from a course;

b. separation for instruction in a course, with the exception of those portions of sex education instruction dealing exclusively with human sexuality. Instruction in voice or chorus may not be designated as being for one sex or the other. Instruction may be limited to certain vocal ranges or qualities, however, which may result in classes of one or predominantly one sex.

c. required enrollment in a course, including home economics, industrial arts, or military training.

2. The presence of disproportionate numbers of members of one sex or of solely members of one sex in a course, group of courses or programs is not automatically a violation of Title IX. If students of one sex have been excluded from or required to take such courses or their prerequisites in the past, if course descriptions have indicated that members of one sex have been preferred as enrollees or that the course was primarily designed for participation by members of one sex, or if students of one sex have been discouraged from enrolling by faculty, counselors, or other school officials or have only been permitted to enroll if spaces were left after members of the opposite sex enrolled, a recipient must take active steps to enroll students of the sex previously excluded or given less preference. Announcements that all courses are open to students

of both sexes and revisions of course descriptions are important first steps. In addition, guidance counselors should affirmatively apprise students and parents of the availability of courses without regard to sex. On the other hand, if current and past student handbooks and course descriptions have not indicated exclusion or preference, there is no evidence of present or past discriminatory counseling, and the options of taking home economics or shop at the elementary, middle school, or junior high school level have truly been open with no requirement that members of one sex take at least one course in home economics or shop, then disproportionate enrollment in business, trade and home economics courses at the high school level may simply reflect student interest over which the recipient has no control

B. Information to be obtained. (Items starred should be obtained prior to any on-site review.)

*1. Name and number of all classes other than P.E. enrolling 80 percent or more students of one sex. (If the district is included in the annual enrollment survey, the number of such classes is listed on the 102.)

*2. The school district's explanation of why enrollment in such courses is predominantly of one sex.

*3. Name and number of all courses in which enrollment by members of one sex is required. (Check against item X on the 1973-74 101 and item XI on the 1974-75 which indicates if there are any graduation requirements that differ on the basis of sex.)

*4. Name and number of all courses, other than P.E., where instruction is offered separately on the basis of sex, and curriculum guides for such courses. For example, what are the objectives for boys and girls in each course?

*5. Student handbooks or other descriptive information provided students for the past three years to aid them in selecting courses and programs. (Do their parents or guardians receive the same information?)

6. For classes or courses in which there are few if any members of one sex, determine how many students of the underrepresented sex requested the class or course and why any students who requested the course and are not enrolled did not enter. What happened to members of the other sex? Did members of the underrepresented sex enroll in a course and late drop out? If so, find out why. Did members of the other sex also drop out? For the same reason?

7. Interview students who applied but did not enroll to determine their impressions of why they were not enrolled or their reasons for changing their requests. Find out if their choices were discouraged or whether they were encouraged to select alternatives.

8. Interview principals, counselors, and teachers of classes that are composed predominantly of members of one sex to obtain their views about why the enrollment is as it is and about teaching members of both sexes.

9. Interview students of the underrepresented sex enrolled in a course to determine the extent to which they were encouraged or discouraged in carrying out their choices and the extent to which they are treated equally in the classes in question. (It would be a good idea to interview students who aren't in these classes also so that these students won't be pinpointed even further than they already are.)

10. Interview administrators, older teachers, or others who might know (including where possible and when time permits, a search of school board minutes) to find out if there were <u>ever</u> different course requirements (probably home economics and shop) for boys and girls, whether they are still in effect or when they were dropped, and (if they were dropped) how students were notified of the change. (This information may be particularly important in determining the type of remedy or corrective action needed to prevent further discrimination.)

11. Obtain a list of student placements in work-study or cooperative education programs for the current year including:

    a) Title of course;

    b) Employer;

    c) Specific work assignment;

    d) Salary or hourly wage and number of hours per week employed;

    e) A description of the LEA's role, including counseling, in obtaining placements.

VIII. Physical Education. (Subpart D, Section 86.34(a)(b)(d).)

A. Basic Principles

1. Physical education classes may not be conducted separately on the basis of sex, nor may participation in physical education programs be required or refused on the basis of sex.

2. Students may be grouped by ability, as assessed by objective standards, within P.E. classes or activities. Such groupings within a class may result in groups composed of one or predominantly one sex.

3. Students may be separated by sex within P.E. classes for participation in wrestling, boxing, rugby, ice hockey, football and other sports the purpose or major activity of which involves bodily contact. Baseball and softball do not fall within the above definition. For a sport not specified here, obtain as full a description as possible indicating the extent to which its purpose or major activity involves bodily contact; submit the information to headquarters and request a decision.

4. Where use of a single standard for measuring skill or progress in a physical education class has an adverse impact on members of one sex, a different standard or standards which do not have such an effect must be used. For example, if the minimum for passing a 9th grade physical fitness test is to be able to broad jump two meters and most of the boys meet or surpass this standard while most of the girls do not, either separate standards must be adopted for boys and girls or a single standard measuring individual improvement must be used instead.

5. Recipients may have an adjustment period to comply fully with the above requirements. Elementary schools may have up to one year; secondary schools may have up to three years. This is not an automatic waiting period; recipients must comply as

expeditiously as possible and may only take advantage of the adjustment period if they can show real barriers to immediate compliance. Active steps toward full compliance must be taken during the adjustment period. The adjustment period may be employed for the following:

a. staff training and planning;

b. curriculum revision;

c. rescheduling;

d. renovation of facilities or construction of additional facilities.

B. Information to be obtained. (Items starred should be obtained prior to any on-site review.)

*1. Number and description, including the grade level, of all physical education classes conducted separately for males and females.

*2. Number and description, including the grade level, of all physical education classes conducted on a coeducational basis.

*3. Where physical education classes are being conducted separately for males and females:

a. a description of any barriers preventing immediate compliance with Title IX requirements;

b. a description of the steps being taken to overcome such barriers and a timetable for their implementation.

4. On-site, determine whether the school or LEA is complying as expeditiously as possible. In doing this, inspect facilities, examine curriculum guides, and interview staff to determine what they are doing to convert to a coeducational program and what problems they are encountering or foresee.

IX. Single-sex Schools and Special Schools (other than vocational). (See Subpart D, Section 86.34 (b) and for Special Schools, Section 86.31.)

A. Basic Principles

1. A school district may operate single-sex, non-vocational schools if:

   a. they exist for members of both sexes;

   b. comparable programs, curricular activities, services, facilities, and equipment are equally available to members of both sexes and the same criteria or standards are applied at both for admissions, retention, promotion, program completion, and graduation.

2. In the few instances where single-sex schools constitute the only junior high or high schools in a district, certain elective courses, for example, calculus or third year German in which enrollment is low, may be offered at only one school IF:

   a. their location is not indicated until after students have selected courses and classes;

   b. provisions are made for students from both schools to enroll in the class;

   c. such classes are equally distributed among both schools so that the burden of "dislocation" falls equally on members of both sexes.

3. Single-sex, non-public, nonvocational schools which are not part of a non-public school system are eligible for Federal financial assistance for which they would otherwise qualify. Single-sex, non-public, nonvocational schools which are part of a non-public school system are eligible for Federal assistance if they meet the conditions described in this section

under A. 1. and 2.

4. Special schools that are not single-sex, and are either vocational or nonvocational, for example, an alternative school or a school for the arts, may not differentiate on the basis of sex in criteria or standards for admission, retention, promotion, program completion or graduation.

B. Information to be obtained. (Items starred should be obtained in advance.) Note that on the 1974-75 101's, respondents are asked to list any single-sex schools. If you do not have 1974-75 data ask *if the district operates any single-sex schools.

1. For each single-sex or special school:

*a. admissions criteria;

*b. course descriptions provided students to aid them in selection;

*c. requirements for graduation;

*d. copy of student handbook or other data provided students to familiarize them with course offerings, facilities, extracurricular activities, services, and rules and regulations.

2. For each single-sex school:

*a. a list of all courses currently offered and number of sections of the course;

*b. a list of extracurricular activities offered, including intramural and interscholastic athletics;

*c. rules and regulations governing students;

*d. description of all student services offered;

e. on-site, inspect and describe the facilities, equipment and general condition of the school plant, including gyms, playing fields, locker rooms, showers, toilets, laboratory facilities and equipment, and libraries. (Copies of accreditation reports for junior high and high schools will provide you with data on classroom sizes, number of library volumes, laboratories, etc.);

f. examine library selections in both schools. Do they differ in any way? Examine particularly carefully the periodical selection;

g. review yearbooks and other publications to verify and obtain further information about the program in each school.

X. Treatment of Pregnant Students. (Subpart D, Section 86.40(b).)

A. Basic Principles

1. A pregnant student may not be discriminated against in any aspect of the educational program, including compulsory participation in or exclusion from any classes or extra-curricular activities.

2. School systems may operate special programs, schools, and classes for pregnant girls. However, attendance in any of the above must be truly optional, i.e., at the request of the girl or upon the certification of her doctor. Attendance is not considered optional if the only options are leaving school or enrolling in a special program.

3. A pregnant girl who for medical reasons finds it necessary to be homebound must be provided with the same services provided to other students who are homebound for medical reasons. In other words, if an LEA provides homebound instruction to medically disabled students, it must provide homebound instruction to similarly disabled pregnant girls.

4. If a school system requires courses or activities that a pregnant girl may not engage in for medical reasons, she should be considered exempt from the requirement if other students are granted exemptions for medical reasons. The pregnant girl should be required to furnish the same information or medical certification as other students requesting medical exemptions and no more.

5. If a school system has no services or other provisions for temporarily disabled students, it must treat pregnancy as a justification for a leave of absence for a reasonable period of time, after which the student must be reinstated to the status she held when the leave began.

6. Any separate instructional program offered pregnant students must be comparable to the regular instructional program.

B. Information to be obtained. (Items starred should be obtained prior to any on-site review.)

*1. Copies of any policies, regulations, or directives regarding treatment of pregnant students.

*2. Descriptions of any special courses, programs, schools, or other services provided by the LEA to pregnant students.

*3. Descriptions of any services provided by the LEA to students with temporary disabilities and the number of students, by sex, who have received such services since July 1, 1972.

*4. Number of girls who have dropped out of school because of pregnancy or related conditions during the present and each of the past three school years.

*5. Number of girls who left school due to pregnancy or childbirth who have reentered the regular program during the present and each of the past three school years.

*6. Number of pregnant girls who have remained in the regular school program during the present and each of the past three school years.

7. If the district has a special school annex or other special program for pregnant girls, interview the enrollees to determine the extent to which their enrollment was optional. (Why did you choose to enroll in this program? If you had not been able to enroll in this school, what would you have done? Would you have remained in the regular program? Were you advised by anyone to enter this school? etc.)

8. If a substantial number of girls left school because of pregnancy, secure their names and addresses and interview as many as possible to determine the extent to which their withdrawal was voluntary and their reasons for not returning.

9. Interview students who left because of pregnancy and have since returned to determine:

    a) the extent to which their withdrawal was voluntary;

    b) if they encountered any particular problems in being reinstated.

10. Interview the director of any program or school for pregnant girls to determine her or his:

    a) description of the goals of the program;

    b) assessment of the extent to which enrollment has been voluntary;

    c) assessment of the extent to which the students enrolled will return to and remain in the regular program.

XI. Student Services. (Subpart D, Section 86.31 (b)(3)(7) and (d); Sections 86.36 - 86.39.)

A. Basic Principles

1. Counseling services may not differentiate on the basis of sex in terms of:

a. career or course guidance offered;

b. tests or other materials used for appraising or evaluating students, including the use of tests which permit or require different treatment of the results on the basis of sex, unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias.

The following are descriptions of vocational interest instruments commonly in use:

-- Strong Vocational Interest Blank: has two separate test booklets, one for each sex; contains explicitly sexist items (e.g. "Do you like stag parties?") and gender-loaded occupational titles (police*man*, sales*man*); includes an antiquated Masculinity-Femininity scale; limits options solely on the basis of sex.

-- Strong-Campbell Interest Inventory: a 1974 revision of the SVIB described above. Eliminates most, but not all of the sex bias problems of the SVIB. Recommended for use with students who are professionally oriented.

-- Holland's Self-Directed Search: has been cited in studies for its sex bias; activities are categorized as "realistic" and

"conventional" on the basis of sex; uses gender-specific occupational titles; a person must limit responses to what he or she has done rather than to what he or she might like to do, thus further limiting choices on the basis of experiences which may not have been available to members of both sexes.

-- Kuder Occupational Interest Survey, Form DD: revisions were made in 1974 in the reporting system and in the interpretative leaflet with the intent of removing sex bias; previously females' interests were compared only on female-normed occupational scales; now both males and females receive scores on both male-normed and female-normed occupational scales; all but a few of the occupational titles are not gender-linked; intended for college students, students in grades 11-12, and adults.

-- Kuder General Interest Survey, Form E (new version of Form C): Interpretative materials have been revised to explain why there are separate norms for males and females. Both male and female profiles are reported for any given person <u>if</u> the sex grid is left blank on the machine scorable answer sheet; on the hand-scored version, a student can develop both male and female profiles. Two levels of profile leaflets, one for grades 6-8 and one for grades 9-12, are available. It would seem that there are still problems with this one, much being dependent on instructions given by the test administrator.

-- The Non-Sexist Vocational Card Sort: designed with the express purpose of providing an unbiased means of assessing vocational interest; uses gender-neutral occupational titles. Available from the University Counseling Center, University of Florida.[1]

2. Recipients must develop and use internal procedures to ensure that appraisal and counseling materials do not discriminate on the basis of sex.

3. Where the use of a counseling or other instrument results in a substantially disproportionate number of individuals of one sex in any particular course of study or classification, the recipient must take whatever action is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

4. Where a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take whatever action is necessary to ensure that such disproportion is not the result of sex discrimination in counseling or appraisal materials or by counselors.

5. Health services and insurance provided to students may not discriminate on the basis of sex. (See the prohibitions under Subpart E, Section 86.56 for further discussion of fringe benefits as well as the discussion in Section 89, p. 24136 of the preamble.)

6. Employment or job placement services may not discriminate on the basis of sex. Specifically, a placement service or employment office operated by the recipient:

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1. The above information for the most part was taken from Eliminating Sex Discrimination in Schools: A Source Book, North Carolina State Department of Public Instruction, Raleigh, N.C.: May, 1975.

a. must obtain assurances of nondiscrimination from potential employers;

b. may not accept employment requests from or refer any student to employers who:

1) specify that only members of one sex will be considered for positions or that preferential consideration will be given to members of one sex;

2) have not furnished assurances of nondiscrimination.

c. may not differentiate on the basis of sex in jobs posted or referrals made;

d. should keep records by sex of referrals made and the outcome, including whether students were employed, the positions in which they were employed, and the salaries given. The recipient should periodically analyze such records to assure nondiscrimination and where patterns of differential job assignments, salaries, acceptance or rejections appear, ask the employer to demonstrate that such patterns are not the result of discriminatory practices. 'If the employer fails to make such demonstration of if such demonstration does not provide sufficient assurance that employment is made available without discrimination, the recipient is required to terminate its relationship with the employer. Keep in mind that in executing the above process, the recipient is not required to conduct on-site reviews.

7. In instances where an LEA provides tuition grants to students for obtaining services at other facilities, as may be the case with institutional care for the severely mentally retarded, such aid may not be differentiated on the basis of sex.

B. Information to be obtained. (Items starred should be obtained prior to any on-site review.)

*1. Descriptions of all student services, including but not limited to counseling, health, employment and services for special needs;

*2. copies of any insurance policies which the recipient makes available to students;

*3. the names, including form and date of publication, of any appraisal instruments used in counseling students or assigning them to programs;

*4. a description of the internal procedures being used to ensure that appraisal and counseling materials do not discriminate on the basis of sex;

*5. for each elementary, junior high, high, and vocational school, as appropriate, the number of students enrolled in the following categories of courses or programs:

a. business and office occupations

b. industrial and trade

c. home economics

d. health occupations

e. special education

*6. If the number of individuals of one sex enrolled in any of the above categories of courses or programs is substantially disproportionate, what action has been taken by the recipient to assure that such disproportion is not the result of sex discrimination in a counseling or other instrument or its application?

*7. For each elementary, junior high, high and vocational school, where a particular class contains a substantially disproportionate number of

individuals of one sex, what action has been taken to ensure that such disproportion is not the result of sex discrimination in counseling or appraisal materials or by counselors?

8. Interview those involved with any job placement services to determine what records are kept. Look through any openings posted there or in the classified section of the school newspaper to see if members of one sex are given preferential consideration or excluded from applying.

9. If records are kept of referrals and their outcome, determine the extent to which discriminatory patterns appear. If only girls are referred to babysitting jobs and boys to gardening jobs, find out why.

10. Ask counselors what appraisal instruments they use and if different forms are used or if the results are treated differently for boys and girls.

11. Ask counselors to what extent they provide career guidance and course information in traditionally female fields to boys and vice versa. Ask them if they know of any girls interested in entering traditionally male fields and vice versa.

12. Determine whether the district provides tuition aid for special services and obtain a list of students, by name and sex, receiving such aid and the service received. If there is a preponderance of members of one sex receiving aid for certain services, find out why.

XII. Extracurricular Activities (excluding athletics). (Subpart D, Section 86.31(a)(b)(d))

A. Basic Principles - An LEA may not conduct, operate, sponsor or support any extracurricular activity which on the basis of sex:

1. excluded students from participation;

2. limits students participation;

3. differentiates in treatment of students.

B. Data to be obtained. (Items starred should be obtained prior to any on-site review.)

*1. List of all extracurricular activities including:

a. Name

b. Number of members by sex

c. Name and sex of faculty advisor

d. Meeting times (day(s), hours)

*2. Copies of any policies or regulations concerning student membership in extracurricular activities.

*3. Copies of student handbooks or other information describing the extracurricular activities in which they may participate.

4. On-site, check the above information against the activities shown in yearbooks or otherwise described in school publications.

5. Certain clubs or organizations merit particular scrutiny, including:

a. Future Farmers of America

b. Future Homemakers of America

c. Cheerleaders

d. Glee Clubs and Choruses (They should not have boys' and girls' sections but rather sections

composed of certain voice ranges, which may result in choruses of one or predominately one sex

e. Pep Club

f. Stage Crew

g. Audio-visual aides

h. Crossing guards

i. Hall monitors

6. Ask principals, counselors, and faculty advisors for their opinions about the causes of membership in particular extracurricular activities being primarily or exclusively one-sex. Also ask students within those organizations when possible.

XIII. Intramural, Club and Interscholastic Athletics (Subpart D, Section 86.41)

A. Basic Principles

1. With two exceptions, athletic programs may not be conducted separately on the basis of sex. These exceptions are:

   a. teams in contact sports: football, basketball, wrestling, boxing, ice hockey, rugby or other sports whose purpose of major activity involves bodily contact. Note that this definition does not apply to baseball and softball. For other sports, a determination must be made as to whether their purpose or major activity involves bodily contact. Obtain as full a description as possible indicating the extent to which its purpose or major activity involves bodily contact; submit the information to headquarters and request a decision.

   b. teams in sports where selection is based upon competitive skill

2. A recipient is permitted but not required to conduct teams in which the above two exceptions apply separately unless operation of separate teams is necessary for effective accommodation of the interests and abilities of members of both sexes.

3. Where a recipient operates or sponsors a team in a non-contact sport for members of one sex and operates or sponsors no team in that sport for members of the other sex, members of the excluded sex must be allowed to try out for that team if overall athletic opportunities for members of the excluded sex have previously been limited. The fact that there has been no tennis team for female students does not automatically mean that they must be allowed to try out for the "male" tennis team. They must be permitted to try out for it, however, if opportunities to participate in competitive athletics generally (not just tennis) have previously been more limited for females than for males.

4. Persons may not be excluded on the basis of sex from participation in a sport offered at the intramural, club, or interschclastic team level, even though it

may be a contact sport or the basis for team selection is competitive skill, if sufficient interest exists among members of the sex that would otherwise be excluded to form a separate team and if there are fewer opportunities for members of that sex to participate in athletics at the level of competition in question.

5. A recipient may operate unitary teams (i.e. teams composed of members of both sexes) for which selection is based upon competitive skill only if, in doing so, the interests and abilities of members of both sexes are effectively accommodated. In other words, where a school decides that anyone, regardless of sex, may try out for a team, and there is substantial interest on the part of females in that sport, but very few members of that sex have skill sufficient to be selected, the sponsorship of the unitary team would not be sufficient to meet the interests and abilities of both sexes.

6. Teams (usually intramural) in noncontact sports, for which selection is based on interest rather than skill, may not limit membership to students of one sex.

7. Equal opportunity to participate in athletics must be provided to members of both sexes. Factors to be considered in assessing equality of opportunity include, but are not limited to:

   a. effective accommodation of the interests and abilities of members of both sexes in sports and levels of competition offered;

   b. equipment and supplies provided;

   c. travel and per diem allowance provisions;

   d. opportunities to receive coaching and academic tutoring;

   e. access to locker rooms, practice and competitive facilities;

   f. access to medical and training facilities and services;

g. access to housing and dining facilities and services;

h. efforts to provide publicity.

8. Neither equal aggregate nor equal per capita expenditures for male and female teams are required. However, whether necessary funds are provided may be considered in assessing equality of opportunity for members of one sex. Weighing the items listed under XIII. A. 7 are more important in determining equality of opportunity than a detailed analysis of the athletic budget, which OCR should seek to avoid.

9. Teams composed primarily or exclusively of members of one sex may not be subject to limitations or regulations (not game rules), particularly with respect to scheduling and supervision, that are different from those to which teams composed exclusively or primarily of members of the other sex are subject. Thus, for example, the criteria for eligibility, including medical examination and scholastic average, may not differ on the basis of sex.

10. Students may not be denied coaching, instruction, training or other supervision (except in locker rooms) by a person of the opposite sex nor, conversely, under the regulations relating to employment, may a person be prevented from coaching, instructing, training or otherwise supervising students of the opposite sex.

11. While the length of a season, including the number of opportunities to compete, may not differ on the basis of sex, a school may schedule competitive events in the same sport at different times for girls' and boys' teams. For example, the girls' golf team may compete in the fall while the boys' golf team competes in the spring, or girls' basketball may be scheduled on Friday night and boys' on Saturday morning. Opportunities to compete before an audience, however, should be comparable.

12. A recipient is required to provide equal opportunities to members of both sexes in athletics as expeditiously as possible but may have up to than one year to do so for elementary school students (in grade 6 and below) and up to three years to do so for students in grade 7 or above. As with physical education, these are not automatic waiting periods. Such an adjustment period may only be justified by the recipient demonstrating:

    a. there are real barriers to achieving immediate parity for students of both sexes. (Lack of a female coach to supervise the locker room for female students is not a justification for a delay.)

    b. steps are being taken, with a specific timetable for their implementation, to overcome the barriers so identified.

Note - Persons conducting compliance reviews should be mindful of the fact that the focus of the athletic section is on equal opportunity and <u>not on equality of expenditures</u>. Clearly, the cost of running a male football team will far exceed the costs of running a female field hockey team due to differences in equipment, numbers of team participants, etc.

The Department has eschewed any standards or administrative enforcement methods which make compliance depend upon financial analyses, detailed reviews of athletic budgets, the flow or earmarking of funds and determinations of the equitability of fund distribution, per se, between women's and men's athletic programs.

B. Data to be obtained. (Items starred should be obtained prior to going on-site.)

1. For each school, list by sport and level (i.e. intramural, varsity, junior varsity) the number of teams engaged in competition, including the number of:

    *a. all-male teams and number of members on a team;

    *b. all-female teams and number of members on a team;

*c. mixed teams (how many males and females are on each team?)

*2. A list of the number of competitive events each of the teams has scheduled.

*3. A list of the coaches, by name and sex, for each of the above teams.

4. The salaries each of the above receives for coaching.

*5. Total amount of practice time each team is allotted and a description of the practice facilities and specific time periods allotted each team for their use.

*6. Facility or facilities used by each team for competition and its scheduled (date, time) use of these facilities.

7. Provisions made for transporting each team to competitive events away from home, including the events away from home in which each team participates, where each team plays, mode or modes of transportation used by each team, and per diem allowance, if any, for each team.

*8. Copies of rules or by-laws of any interscholastic athletic association or league in which the recipient or the teams participate.

9. Copies of any publicity furnished to media about sports events or about individual team members during the past year.

10. Inspect and describe the extent to which the training, practice, locker room and shower facilities available to members of each sex are comparable.

11. Inspect and describe the extent to which equipment and uniforms provided members of each sex are comparable.

12. Ask coaches and team members what differences they perceive in provisions made for competition by males and females.

13. Do cheerleaders and the pep band perform at both boys' and girls' competitive events? Are there pep rallies for both?

14. Interview athletic directors, coaches, physical education teachers, and students (particularly student athletes) to determine to what extent they think the interests and abilities of members of both sexes have been effectively accommodated.

15. Find out what means a recipient employs to evaluate the extent to which it is effectively accommodating the interests and abilities of members of both sexes.

*16. Where members of both sexes do not currently have equal opportunity in a recipient's athletic program:

a. what steps are being taken to provide equal opportunity?

b. what are the barriers to their immediate implementation?

XIV. Codes of Conduct (Including Dress Codes) and Other Regulations Governing Students (Subpart D, Section 86.31 (b)(4-6))

A. Basic Principles - A recipient may not on the basis of sex:

1. subject any person to separate rules of behavior or other treatment;

2. apply different standards for determining compliance with such rules;

3. mete out different punishments or penalties for violations;

4. apply different rules of appearance, including different regulations governing length of hair. In addition, regulations prohibiting beards or moustaches, as they basically only apply to males, are prohibited. In reviewing dress codes, apply a rule of reason. While recipients should be encouraged to adopt dress codes that are not gender specific, i.e. "neat", "clean," "appropriate," the regulation should not be followed so strictly so that to apply it specifically would be disruptive to the educational process. Thus, a regulation requiring male students to wear slacks and requiring female students to wear either skirts or slacks would not be a violation.

B. Data to be obtained. (Items starred should be obtained in advance.)

*1. copies of student handbooks or other statements setting forth any rules or regulations governing student behavior or appearance;

*2. copies of student handbooks or other statements setting forth regulations governing punishments or penalties, including suspensions and expulsions;

3. on-site, records of disciplinary action taken against students, including the:

a. sex of student;

b. nature of offense;

c. type of action taken (detention hall, paddling, days suspended, etc.)

4. name and sex of individuals who have responsibility for determining or enacting disciplinary sanctions. Does the sex of the individual meting out punishment depend upon the sex of the student upon whom the sanction is imposed? Are only individuals of one sex responsible for discipline? If so, why?

XV. Honors and Awards - (Subpart D, Section 86.31(b)(1-3)(7))

A. Basic Principles - An LEA may not:

1. differentiate on the basis of sex in bestowing awards - for example, award letters to outstanding male athletes and certificates to outstanding female athletes;

2. sponsor activities or clubs that limit membership to one sex - for example, separate letter clubs or honor societies for girls and boys;

3. bestow awards on the basis of sex - for example, outstanding boy and outstanding girl. It may give awards to outstanding students, some or all of whom may be male or female. For such honors as Homecoming Queen, Mardi Gras King, etc., the overall opportunities for males and females to be selected should be comparable.

4. have different criteria on the basis of sex for selection - for example, a higher grade point average for members of one sex than for the other for eligibility for membership in an honor society.

B. Data to be obtained. (Items starred should be obtained prior to going on-site.)

*1. For elementary, junior high and high schools, a list of all organizations including athletic organizations, for which students are selected on the basis of achievement, services or a combination of both, and the membership in each such organization broken down by sex.

*2. For junior high and high schools, a list of any prizes, awards, or scholarships awarded to students in the past three years, including the name and sex of each recipient and a description of the extent to which the school or LEA participates in the nomination and selection process. (Again, you should limit initial requests to a sampling of each type of school in large districts.)

3. On-site, obtain copies of yearbooks and graduation

programs for the past three years for each junior high and high school. (Check the honorary organizations, prizes, scholarships, and awards listed in one or the other against the list provided you by LEA.)

4. Interview high school principals and counselors to obtain their assessment of the scholarship and other financial aid opportunities available to boys and girls. Find out what role the school plays in helping students obtain scholarships or other financial aid.

5. Find out if notices are posted of scholarships or other financial aid for which students may apply and in what other ways students are informed of assistance available to them. Does the school process applications for scholarships elsewhere that are available to only members of one sex?

XVI. Employment Practices and Policies. (Subpart E, Sections 86.51 - 86.61.)

A. Basic Principles

1. Sex discrimination in employment (including recruitment, selection, transfer, referral, retention, dismissal, membership) in educational programs or activities, whether professional or non-professional, is prohibited.

2. Employment decisions must be made in a nondiscriminatory manner.

3. Contractual or other relationships which have the effect of subjecting employees to discrimination on the basis of sex are prohibited, including relationships or collective bargaining agreements with:

   a. employment and referral agencies;

   b. labor unions;

   c. professional organizations;

   d. organizations providing or administering fringe benefits.

4. Employer-sponsored activities, including social and recreational programs, which discriminate on the basis of sex are prohibited.

5. Recipients may not recruit primarily at educational institutions, schools or other organizations which admit only or predominantly members of one sex if to do so has an effect of discriminating on the basis of sex.

6. Recipients may not grant preference to applicants for employment who attended an educational institution which enrolls only or predominantly students of one sex if to do so has an effect of discriminating on the basis of sex.

7. Recipients may not discriminate in the provision of fringe benefits which are defined as any medical, hospital, accident, life insurance or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment. Specifically, recipients may <u>not</u>:

   a. discriminate on the basis of sex in making fringe benefits available to employees;

   b. make fringe benefits available to spouses, families or dependents of employees differently on the basis of the employee's sex;

   c. administer, operate, offer or participate in a fringe benefit plan which does not provide <u>either</u> for equal periodic benefits for members of each sex <u>or</u> for equal recipient contributions to the plan for members of each sex;

   d. administer, operate, or participate in a pension or retirement plan which establishes different optional or compulsory retirement ages for each sex or otherwise discriminates in benefits on the basis of sex.

Note that a recipient is not automatically required to provide permanent part-time employees fringe benefits proportionate to those provided full-time employees where its female (or male) permanent employees are disproportionately part-time or its permanent part-time employees are disproportionately female (or male). In order to require proportionate benefits for part-time employees in such situations, OCR must demonstrate that a particular method of providing (or not providing) fringe benefits to part-time employees is discriminatory on the basis of sex.

8. The process of selection of employees from a pool of qualified applicants must follow procedures designed to ensure nondiscrimination. Selection standards and procedures must not distinguish on the basis of sex or be applied inconsistently so as to deny equality of opportunity for males and females. (The references to selection procedures are meant to apply to any employment decision, including hire, transfer, promotion, membership, training, referral, or retention.) Recipients should be advised that selection criteria, tests, and other assessment techniques, which impact adversely on either sex, must be job-related and be valid predictors of job performance. (While in theory the previous statement applies to such criteria as degrees and state certification requirements, means are not available at this time to test their validity as predictors of job performance and OCR should limit inquiries in this area to determining the extent to which such criteria are consistently applied.)

9. Of qualified applicants for particular positions, men and women should be selected in reasonable proportion to their availability in the labor pool. The labor pool includes employed, underemployed and unemployed individuals. An employer utilizing nondiscriminatory or affirmative recruitment procedures should obtain an applicant pool that reflects the proportion of men, women and minorities in the labor pool. If an LEA's applicant pool does not reflect the composition of the labor pool, it must be required both to demonstrate that its recruitment procedures are indeed nondiscriminatory and to provide an explanation of the discrepancy between the composition of its applicant pool and the labor pool. Selection of applicants should reasonably reflect the proportion of men and women in the applicant pool at the time of selection.

10. Employment practices/procedures as they relate to the potential or actual marital, parental, or family status of an employee or applicant for employment are prohibited when such persons are treated differentially on the basis of sex. Under the regulation, pre-employment inquiries about an individual's marital status (Miss or Mrs. - single, married, divorced, etc.) are prohibited. A nepotism policy is permissible only if it impacts equally on members of both sexes.

11. Where a pattern exists in which members of one sex are more often assigned to, as opposed to hired in, lower ranks, levels, or classifications of job responsibility and status, the burden is placed on the employer (LEA) to demonstrate that such a pattern is not the result of discriminatory practices. Nevertheless, OCR should document as much as possible <u>any</u> discriminatory practices that can be identified (in recruitment, hiring, assignment, conditions of work, benefits and rights, termination or lay offs, etc.)

12. Salaries for the same or comparable jobs and same or comparable responsibilities must be equal for men and women. Specific criteria for determining salaries for each job classification and within each job classification should be made known to all present and potential employees.

13. Policies, procedures, and criteria for selection should be in writing. The dissemination and application of such policies, etc. may not have a differential effect on the opportunities for selection and advancement of members of either sex.

14. Administrative internships, other inservice or apprenticeship training, staff development opportunities, and tuition grants or other compensation designed to prepare employees for promotion must be equally available to men and women or be designed to eliminate underrepresentation of members of one sex in the labor and applicant pools.

15. Leaves - medical, sabbatical, emergency, administrative (to attend conferences, professional meetings, and other related activities), and educational must be available to men and women on an equal basis. Of particular importance is that pregnancy and conditions related to it (miscarriage, abortion, childbirth) be treated as any other disability or medical absence. Where, since June 23, 1972, female employees were not permitted to apply accrued sick leave to maternity leave and employees were able to apply accrued sick leave to any other temporary disability, the recipient is required to offer such employees reimbursement for the amount of sick leave they could otherwise have applied. Reimbursement may be in the form of payment or administrative leave with pay.

16. Violations may occur in the absence of a specific intent to deny equal employment opportunities, as where an apparently neutral practice has an adverse impact on members of one sex. For example, in selecting a director of physical education, a district may nave previous coaching experience as a criterion. This criterion would have an adverse impact on women if opportunities for them to be coaches had previously been limited.

17. Sex as a bona-fied occupational qualification mandated by business necessity is acceptable. In the educational field, however, exceptions on the basis of bona-fide occupational qualifications are narrowly construed and it is unlikely that many exist. Thus, although an attendant for the boys' locker room may be chosen on the basis of sex, selection of coaches may not be made on the basis of sex even if the students are all of one sex in the particular sports for which coaches are hired.

B. Information to be obtained. (Items starred should be obtained prior to any on-site review.)

*1. Organizational chart of school system personnel for both the administrative staff and for separate schools.

*2. The number and percentage of employees by sex for each major job classification (teacher, supervisor, administrator), by level (elementary, junior high,

high, district-wide, sub-district wide). OCR should compare the figures obtained with the percentage of employees by sex in the available labor pool. NOTE: Check census, NEA, and Higher Education Division data for work force (active and potential) numbers and percentages.

*3. In the case of a specific complaint, position descriptions and salaries and descriptions of the qualifications and selection criteria for <u>each</u> position associated with the issues raised in the complaint. Included should be values given specific selection factors and a description of how weighting values were determined and used. (For a routine Title IX review (no complaint) you may want to request just a sampling of position descriptions at particular levels or schools; and secure more detailed data later on-site.)

*4. Published salary schedules for both professional and non-professional positions.

*5. Copies of application forms for both professional and non-professional positions.

*6. Average entry salary by sex. Average salary and grade of 5, 10, 15-year employees by sex. NOTE: this will give a double check on promotion in that average time in a grade may be fine, but salaries are out of line. More detailed data can be requested on-site, and the LEA should be notified that we may wish to inspect the data upon which such averages are computed should an on-site review be scheduled at a later date.

If a specific complaint has been made, more detailed data should be requested before going on-site such as:

<u>Payroll data</u> -

a. For professional staff

1) race and sex;

2) name - or other unique identifier;

3) job title and location of assignment;

4) highest degree or (if counted for salary purposes) highest degree and hours beyond that degree;

5) total years experience;

6) total years experience in school district;

7) yearly salary, including pay for extra assignments and description of such assignments;

8) number of months or days employed per year;

9) full-time or part-time;

10) dates of last two promotions.

b. For non-professional staff:

1) race and sex;

2) name - or other unique identifier;

3) job title and location of assignment;

4) number of years of schooling, highest grade (degree) obtained, if educational background is an employment criterion;

5) years employed in present position;

6) yearly salary;

7) hours of employment;

8) amount of extra pay received the previous school year;

9) assignment for which extra pay was awarded;

10) number of months or days employed per year;

11) full-time or part-time;

12) dates of last two promotions.

*7. Average time in grade (between promotions) of employees by sex. (Again notify the LEA that it may be necessary at a later date to review the data upon which the averages have been computed.)

*8. Copies of all policies relating to granting of leaves of absence, including those for temporary disabilities, extended medical leave, and for pregnancy and related conditions, which have been in effect since June 23, 1972.

*9. Copies of all collective bargaining agreements with both professional and non-professional employee groups.

*10. Copies or descriptions of any medical, hospital, accident, life insurance or retirement benefit, service, policy or plan which the recipient has administered, offered, operated, or participated in since June 23, 1972.

*11. Descriptions of any administrative internships or training programs operated by the LEA or in which the LEA personnel participate, including:

a. name and sex of individuals participating in such programs for the past five years;

b. means used to inform potential applicants or enrollees of the program;

c. criteria for selecting participants.

*12. A list of institutions which employment recruiters visited, to which employment recruitment information (including notices of openings) was sent, or from which employment referrals were sought each of the past three years.

13. List of all extracurricular assignments undertaken by professional and non-professional staff including:

a. name and sex of individual;

b. brief description of assignment (choir director, etc.)

c. amount of any additional salary received for the assignment;

d. information needed to determine whether extracurricular activities undertaken by staff were voluntary or mandatory.

14. On-site, examine a sampling of applicant files for professional and non-professional staff (the number to be examined dependent on requirements of the situation under review) to determine degree of correspondence between other findings - data provided prior to site visit as well as results of interviews with staff on-site. Examination of files should cover areas of concern described in A above - Basic Principles. In cases where there are specific complaints or where specific problem areas have been identified, it may be necessary to compare the personnel files, including evaluations, of individuals positively and negatively affected by the same practice. While you may determine that an individual was treated unfairly or without objectivity, in order to show a violation of Title IX, it is essential to show that such unfairness or lack of objectivity is on the basis of sex or impacts adversely on members of one sex as opposed to the other.

15. If the LEA has a formal policy on nepotism, obtain a written copy. If an informal policy and/or practice obtains, inquire about it of superintendents, principals, teachers, and other staff. Determine if the policy/practice adversely affects members of one sex as opposed to the other.

XVII. Textbooks and Other Curricular Materials. (Section 86.42)

Nothing in the regulation requires, prohibits, or abridges the use of particular textbooks or curricular materials. If you receive letters complaining about sex-role stereotyping or other forms of sex discrimination in textbooks, you may wish to use the following as a model for a response.

Dear_____:

We have received your complaint about the Education County School District's use of a reading program which is allegedly discriminatory in its use of sex-role stereotypes.

The Office for Civil Rights is responsible for enforcing Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in educational programs and activities benefiting from Federal financial assistance. Textbooks and curricular material, however, are specifically exempted from the scope of the Title IX implementing regulation which became effective July 21, 1975 (copy enclosed).

Although we recognize that sex-role stereotyping and other sex bias in textbooks and curricular materials are serious problems, it was decided that the imposition of restrictions in this area could place the Department in a position of limiting free expression in violation of the First Amendment. Consequently, because of its nature, your complaint does not fall within our jurisdiction.

The Department assumes, however, that local education agencies will deal with the problem of sex bias in curricular materials in the exercise of their general authority and control over course content. You may therefore wish to review your concerns with Education County School officials.

(Of course, if the complainant indicates the issue has already been called to the attention of the LEA, the preceding sentence should be omitted.)

Sincerely yours,

Director
Office for Civil Rights
Region _____

XVIII. Review Procedures

A. Strategy for providing maximum coverage of Title IX -- In order to draw school districts attention to the enforcement of Title IX, whenever a review is scheduled, whether Title VI, 504, ESAA, Title IX, Migrant, Lau, or other, the LEA should be asked to submit, along with the other information being requested, copies of publications of the notification of its nondiscriminatory policy as required by Section 86.9(a)(1-2) of the final Title IX regulation.

B. Data collection and Analysis -- While the items suggested in this manual for data collection are numerous, they should not be considered all-inclusive or limiting. You may find that additional data or questions are necessary for making a determination of compliance or non-compliance. Try, however, to keep the data collection burden of the LEA to the absolute minimum necessary for a sound assessment of the recipient's compliance status.

Key data should be collected and analyzed prior to any on-site review. Basically the tools of analysis to be employed are those you are already using in developing a case on in-school discrimination on the basis of race, color or national origin, i.e., determining whether there are patterns of differential treatment. (Of course, whenever such patterns are found, the recipient should be asked for an explanation before final conclusions are drawn.) It may nevertheless be useful to provide a few pointers in some of the areas which must receive OCR attention.

1. Employment - Scrutinize job descriptions and titles carefully. Are titles and salaries for essentially the same work differentiated on the basis of sex? Do only or primarily members of one sex work during hours that entitle them to extra pay, e.g., night maintenance staff as opposed to day maintenance staff? Are both the Vocational Agriculture and Home Economics teachers (making the sexist assumption that they are of different genders) paid for 11 months work?

2. Course Offerings - Do neutral gender terms such as

"the student" connote in the context of other course descriptions that the course is intended for members of one sex only? Do titles or descriptions of activities indicate courses are designed for participation by members of one sex?

3. Student handbooks often point to specific practices, activities, and requirements that are differentiated on the basis of sex. Faculty handbooks may also provide information in this regard.

4. Curriculum guides - Do they suggest different activities on the basis of sex?

C. On-site Reviews -- On-site reviews should focus primarily on interviewing community contacts, school officials and students; observing facilities and services; and observing treatment of students in the school setting (in classrooms, lunch room, at recess on the playground) to determine whether they are being treated differently on the basis of their sex.

During the on-site review, school officials should be asked for explanations of inequitable patterns that you have found through analysis of data previously collected as well as for explanations of apparent inequities you have observed on-site.

Interviews with complainants, representatives of advocacy groups and other community contacts should occur as early as possible during the on-site review. They often provide leads to pertinent data that should be requested from school officials. In addition, allegations made by complainants or other contacts should be checked immediately with school officials. Where there is a discrepancy between that reported to you by the complainant and that reported by the LEA, the complainant should be told of the LEA's report and given an opportunity to disagree with it.

D. Remedies -- Some violations require immediate correction -- usually where there are injured parties, as with discriminatory rates of pay, promotions or job selections, and with exclusion of students from courses they have requested. In the case of the latter, not only must the

student be admitted immediately to the course but he or she must be provided with whatever assistance is necessary to make up for the time lost. Where appropriate, in instances of employment discrimination, back pay should be required from either June 23, 1972, or the date of the "injury," whichever is the later.

Other violations will require both immediate redress to injured parties and other, more long-range action to prevent recurrence of the violation or further discrimination. For example, not only must a student excluded from a class be admitted immediately, but steps must also be taken to notify all persons (teachers, counselors, parents and other students) that all courses are open to both sexes, including prominent notices and, if necessary, revised course descriptions and content. In addition, the recipient must implement specific steps designed to encourage enrollment by students in specific courses or programs from which they were previously excluded on the basis of their sex.

In other instances, such as discontinuing separate physical education classes, time may be allowed for changes in scheduling and course revisions. In general, use your judgment about what can reasonably and feasibly be required within a given time period, given a particular set of circumstances perculiar to an individual school district.

E. Letters of Findings -- Be sure to point out that Title IX was enacted on June 23, 1972 and that copies were sent to all Chief State School Officers and local school district superintendents in February 1973. Also indicate that the final implementing regulation for Title IX was published in the Federal Register on June 4, 1975, copies of which were sent to all Chief State School Officers and local school district superintendents shortly thereafter, and it became effective on July 21, 1975.

Letters of findings should be specific in outlining violations and should quote or at least cite the appropriate section(s) of the regulation to which the violations are tied. They should also outline the nature of the corrective action or remedies required, indicating those demanding immediate action and those for which a

plan and timetable are necessary. In addition to pointing out what is wrong, they should also take cognizance of what is right. Specify a date by which a response is expected. In most cases, 45 days from the date of the letter should be allowed.

When a review has addressed only a few specific issues, as in a complaint investigation, and an LEA has taken action to resolve those issues, do not say that the action taken brings it into full compliance with Title IX, but rather that the action taken "resolves the Title IX issue addressed in our review." In such cases, include a paragraph such as the following:

> "As you know, our review of your school district focused only on curriculum offerings at the junior and senior high school levels. If situations exist in other respects or at other levels in which students or employees are subjected to differential treatment on the basis of sex, they too would be in violation of Title IX and should be corrected. I urge you, therefore, to review all your practices and policies to determine the extent to which they conform to the requirements of the final regulation implementing Title IX, an additional copy of which is enclosed for your convenience.
>
> Your particular attention is called to requirements for:
>
> 1. Self-evaluation (Section 86.3(c-d))
>
> 2. Designation of responsible employee and adoption of grievance procedures (Section 86.3)
>
> 3. Dissemination of Policy (Section 86.9)

In letters of findings for reviews conducted prior to publication of the final regulation, the language above should be adapted to state: "As you know, our review of your school district was conducted prior to the prublication of the final regulation implementing Title IX."

The following is a sample letter of findings:

Dear Superintendnet_____:

Thank you for the cooperation extended to members of my staff during their visit to your school district from September 9 to 13 to investigate a complaint alleging that the operation of the education program in Education County is discriminatory on the basis of sex.

In view of the issuance of the final regulation implementing Title IX of the Education Amendments of 1972, which became effective on July 21, 1975, it seems appropriate to advise you of our findings at this time so that your district may take whatever corrective action is necessary as expeditiously as possible. Enclosed for your convenience is an additional copy of the final Title IX regulation which was sent to you shortly after its publication on June 4, 1975.

A copy of Title IX of the Education Amendments of 1972, which was enacted June 23, 1972, was sent to you in February 1973. Section 901 provides that:

> No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance...

Based on the data gathered during our review, we have concluded that certain policies and practices of your school district are discriminatory on the basis of sex and are therefore in contravention of Title IX.

Specifically we found:

A. Discrimination on the basis of sex occurs in the recruitment and selection, promotion and payment of administrative staff.

During the course of our review, we determined that the Education County School District has no published objective selection criteria nor any qualifications

set forth for administrative staff. The data provided us indicate that most administrative positions are filled by persons holding teaching positions in the district, and that the amount of previous teaching experience has some bearing on promotion to an administrative post. Specifically, although women held 79 percent of the 925 full-time teaching positions in your district, they held only 17 percent of the 65 administrative positions. We also found that there were 10 male and eight female applicants for the three junior high school principalship vacancies in your district last year. Of the female applicants, all eight had at least 12 years previous teaching experience, with an average of 14.3, and six had master's degrees, including one who had 30 hours beyond her master's and 18 years previous experience. The number of years previous teaching experience of the male candidates ranged from three to 14 years, with an average of 6.1, and five had master's degrees. Yet only males were selected for the three principalships, one of whom did not have a master's degree but 10 years of previous teaching experience, and two of whom had master's degrees, one with three years previous teaching experience and the other with seven. These data indicate a pattern of hiring women but failing to promote them to administrative positions at the same rate as their male counterparts in contravention of Section 86.51 of the final regulation.

In addition, we found that although the Education County School District does not advertise administrative staff openings, it does seek recommendations of candidates for such positions from principals. In our discussions with principals and male and female faculty members, we found that principals had informed only male faculty members of the openings and that female applicants had learned of the openings through a less formal grapevine. Specifically, seven of the 10 male applicants for the positions had been informed of the openings by their building principals and told that they would be recommended for an administrative post by their building principals; none of the female applicants had been informed of the opening by their principals, nor did any female applicant receive an assurance of a recommendation from her

principal. We also interviewed 30 male and 20 female employees who had taken courses in school administration while employed by your school district. Of the 30 males interviewed, 23 had been encouraged to take such courses by their principals. Of the 20 females interviewed, only two had received such encouragement and nine reported that their principal had suggested they pursue training in areas in which there were greater opportunities for women. Thus it appears that female employees are receiving less encouragement than men to prepare for and seek administrative positions in contravention of Sections 86.51 and 86.53 of the final regulation.

In addition, of the five assistant superintendents in your district, four are male and one is female. All are employed on a 12-month basis, full-time; all have master's degrees, and all have between 16 and 20 years experience. The female assistant superintendent, however, receives $2500 less salary per year than her male counterparts and has received between $1200 and $2500 less per year since her appointment in 1967, although two of the four male assistant superintendents were appointed to their positions more recently. Unless your district can show that this discrepancy in salary is not based on sex, this is in violation of Section 86.54 of the final regulation which prohibits distinctions in rates of pay or other compensation on the basis of sex.

B. Discrimination on the basis of sex occurs in course offerings, in violation of Section 86.31(b)(i) and 86.34 of the final regulation.

Specifically we found that all boys in grades seven and eight are automatically assigned to classes in industrial arts, while girls are assigned to classes in home economics. In grades 9-12 we found that some female students had requested courses in auto mechanics, mechanical drawing, and offset printing. Their requests had been denied because, according to the Central and West High School principals and counselors, there were not enough girls interested

to make up a separate section of each course and they could not enroll in the other classes because there would not be room for them without displacing boys who had also requested these courses.

Although the Assistant Superintendent for Secondary Schools told us that all elective courses were open to students of both sexes, we found that the course descriptions in the Secondary School Catalogue sometimes indicated otherwise. For instance, the description of Auto Mechanics 1 (p.47) states, "for this course, boys receive training in..." The description of the second year course in offset printing (p.56) refers to "the student" in the initial sentence, but refers to "him" in the concluding sentence. Course descriptions for a few courses (Home and Family Living, Child Care, Home Furnishings, General Crafts, Bookkeeping) specify that "boys and girls are eligible" or "for both boys and girls" while others in the same general categories (Cooking, Clothing Design, Industrial Arts, Business Education) in which enrollment has traditionally been composed of members of one sex, use the terms "he" or "the student." Use of these terms under these circumstances tends to imply that members of one sex only are expected to continue to enroll in these courses.

C. Discrimination occurs on the basis of sex in student eligibility to participate in school district sponsored extracurricular activities in violation of Section 30.31 of the regulation.

During the course of our investigation we ascertained the membersnip by sex in extracurricular activities and found several that were single-sex in composition: Audio-visual Aides, Home Economics Club, Girls' Chorus, Boy's Glee Club, Stage Crew, Pep Band, and Cheerleaders. We were told that female students do not have sufficient mechanical aptitude to be considered eligible for membership in Audio-visual Aides. Similarly, some of the stage crew activities were said be too dangerous for female students. The Pep Band listed as an activity for male students only, while

Cheerleaders is open to only female students. The faculty sponsor of the Home Economics Clubs told us that no male student had expressed an interest in this activity and the description of this activity in the student handbook did not indicate that participation was limited to members of one sex. Title IX does not prohibit glee clubs or choruses composed of certain voice ranges which may result in membership of one or predominantly one sex. It does prohibit limiting membership on the basis of sex however.

In order to come into compliance with the requirements of Title IX of the Education Amendments of 1972, corrective steps are needed by your school district to:

A. Eliminate the pattern of discrimination shown in employment by:

1. establishing formal procedures for announcing and publishing position openings, making clear that they are open to all individuals regardless of sex, race, color, or national origin;

2. making affirmative efforts both to notify potential women candidates of administrative vacancies and to encourage women to apply for such vacancies and obtain the training that would entitle them to favorable consideration;

3. establishing written, objective, nondiscriminatory criteria for selection for all staff positions.

4. equalizing salaries which have differed of the basis of sex, including the award of back pay to any individual awarded a lower salary on the basis of sex since passage of Title IX on June 23, 1972.

B. Open participation in all courses to students of both sexes, including:

1. making immediate provisions for students

to receive instruction previously denied them on the basis of sex;

2. notifying all school district personnel, students, parents, and the community generally that all courses are available to both male and female students and that no preference will be given to a student's choice on the basis of her or his sex;

3. developing and implementing specific affirmative steps to interest students in enrolling in courses from which they have previously and traditionally been excluded on the basis of sex;

4. revising course descriptions so that they in no way imply that enrollment by students of one sex is preferred or expected.

C. Eliminate limitations on participation in extracurricular activities that are based on sex by:

1. immediately admitting students to extracurricular activities who were previously denied membership on the basis of their sex;

2. notifying all school district personnel, students, parents, and the community generally that all extracurricular activities sponsored by your district are open to both male and female students;

3. developing and implementing specific affirmative steps to encourage students to participate in extracurricualr activities from which they have previously and traditionally been excluded on the basis of their sex;

4. revising descriptions of extracurricular activities in student handbooks and other

publications to insure that they clearly indicate membership is open to students of both sexes without preference.

Because our review was conducted prior to issuance of the final Title IX regulation, we did not inspect the athletic and physical education programs of your district. I would therefore appreciate your reviewing Sections 86.34(a-d) and 86.41 to determine the extent to which your physical education and athletics programs conform to the requirements of the regulation.

In addition, your particular attention is called to the final regulation's requirements for:

1. Self-evaluation (Section 86.3 (c-d))

2. Designation of responsible employee and adoption of grievance procedures (Section 86.8)

3. Dissemination of Policy (Section 86.9)

I recognize that neither you nor your Board of Education instituted the practices we have identified as violations with the conscious intent of discriminating, and wish to assure you of our full cooperation in assisting your district in complying with the requirements of Title IX.

Please let me know within 45 days of the date of this letter of the specific steps you are taking, as well as a timetable for their implementation, to correct the discrimination outlined above. If you have questions or requests in the meantime, do not hesitate to contact me.

Sincerely yours,

_____

Director, Office for Civil Rights
Region_____